IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8127 OF 2004

Thakurdas Parwani .. Petitioner.
Vs.
Ananthasubramaniam Jagadesan
(since deceased) through his
heirs and legal representatives
1a.Paravathi Jagadesan & Ors. .. Respondents.

Mr.R.A.Thorat for the petitioner.
Mr.E.K.Shashidaran for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 18TH OCTOBER, 2004

P.C.:

. Heard Mr.Thorat, learned counsel for the petitioner and Mr.Shashidaran, learned counsel for the respondents.

2. The petitioner is an obstructionist. The present writ petition arises out of Obstructionist Notice No.17 of 2003. The obstructionist notice, taken out by the respondent-landlord, was made absolute and the obstruction raised by the petitioner to the execution of the decree was directed to be removed and the decree was directed to be executed by warrant of possession vide order dated 11.6.2004. That order was carried in appeal

bearing Appeal No.483 of 2004 which came to be summarily dismissed by the appellate court vide order dated 12.8.2004. That order is being challenged in the instant petition.

3. The main contention urged by Mr.Thorat, learned counsel for the petitioner is that the Small Causes Court had no jurisdiction to entertain the original ejectment application bearing No.57/324/E of 1966 against the petitioner's father i.e. original tenant for possession of the suit premises under section 41 of Presidency Small Causes Court Act, 1882 (for short "Act of 1882"). In support of his contention he invited my attention to the leave and licence agreement to show that the licensee was liable to pay sum of Rs.550/- as monthly compensation for the use and occupation of the premises in dispute and, therefore, according to Mr.Thorat the Small Causes Court had no pecuniary jurisdiction to entertain the ejectment application filed under section 41 of the Act of 1882. The question, therefore, raised by Mr.Thorat is that whether or not the decree being nullity for want of pecuniary jurisdiction is liable to be executed and the petitioner being in possession of the suit premises has right to

obstruct the execution under Order 21 Rule 97 of the Civil Procedure Code. According to Mr.Thorat, the decree was nullity on the ground, as stated above. There is no dispute that a specific plea was raised in the ejectment application No.57/324/E of 1966 by the original tenant, father of the petitioner, and in view thereof an issue was framed as to "Whether this court (i.e. Small Causes Court) has pecuniary jurisdiction to try and entertain this application (i.e.ejectment application). That issue was answered in affirmative by the Small Causes Court in the judgment and order dated 19.3.1997. The matter was carried in appeal, thereafter in writ petition and further in S.L.P. by the tenant and the finding recorded on the said issue was affirmed. It is against this backdrop, in my opinion, it is not open for this court to entertain the very question as to whether ejectment application itself was maintainable for want of pecuniary jurisdiction, merely because the obstructionist, who was not party to the suit, has right to raise such question in this proceedings under order 21 Rule 97 of Civil Procedure Code. The answer to the said issue cannot be different from the one recorded in the earlier round of litigation and which was confirmed

by the Apex Court. The decree in any case, therefore, cannot be held nullity. In view of the peculiar facts and circumstances of the case the judgment of this court relied on by Mr.Thorat in **Mani Nariman Daruwala since deceased by his heirs Rusi Nariman Daruwala and Others Vs. Phiroz N.Bhatena and Others 1991 Mh.L.J. 376** is of no avail to the petitioner. In so far as the second contention urged by Mr.Thorat that the appellate court, being the first Court of appeal ought to have admitted the appeal and allowed the petitioner to establish his independent right in the suit premises. Though the appellate court dismissed the appeal summarily at the stage of admission has recorded the reasons for dismissing the same. It is apparent that the petitioner failed to establish his independent right, title and interest in the suit premises. No case for interference under Article 227 of the Constitution in the impugned order is made out. The writ petition, therefore, fails and is dismissed as such. Mr.Thorat, learned counsel for the petitioner, at this stage prayed for stay to the execution till 30th November, 2004. Instead of granting stay to the execution, in my opinion, the ends of justice would be met if the time to vacate the suit premises is granted till

30th November, 2004. Order accordingly.

(D.B.Bhosale, J.)